IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.2062/2007
Dr. Nirupma Chauhan & Anr.
Vs.
The Rajasthan University of Health Science, Jaipur & Ors.

Date of Order :: 15th May, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Ashok Gaur for petitioner.
Shri R.A. Katta for respondents.

REPORTABLE

This writ petition has been filed with the prayers that Regulation 9 of Post Graduate Medical Education Regulations 2000 be declared unconstitutional to the extent of not providing relaxation to the female candidates in securing qualifying marks for Pre P.G. Medical Examination and the respondents be directed to prescribe 40% minimum marks for eligibility of admission to Post Graduate Medical Course and be

further directed to treat the petitioners eligible on the basis of 40% and more marks secured by them in such examination and admit them to P.G. Medical Course and alternatively a further direction against the respondents has been sought for that they should conduct fresh Pre P.G. Medical Examination after prescribing 40% qualifying marks for female candidates.

I have heard Shri Ashok Gaur, the learned counsel for the petitioners and Shri R.A. Katta, the learned counsel for the respondents.

Shri Ashok Gaur, the learned counsel for the petitioner argued that when the Medical Council of India in clause (9) of the Regulations of 2000 has applied a different yardstick for the members of S.C., S.T. and OBC in providing relaxation as to minimum qualifying marks, treating the females

differently for whom also the reservation to the extent of 30% has been provided, is per se illegal and liable to be declared unconstitutional. Learned counsel argued that the petitioners have secured more than 40% marks but their percentage in any case is higher than those who have been held eligible for admission at 40% of the minimum marks. Different treatment accorded to the female candidates is therefore arbitrary, unseasonable, discriminatory and violative of Article 14 of the Constitution of India.

Shri R.A. Katta, the learned counsel for the respondent opposed the writ petition and argued that the petitioner having fully known that the minimum qualifying marks was 50% for both males and females who are not natural born S.C., S.T. and O.B.C. and appeared in the Pre P.G. Post Graduate Examination, 2007 and now failed to secure

minimum marks prescribed i.e. 50%, cannot be permitted to assail the validity of clause 9 of the Regulations of 2000. Shri Katta referred to the judgment of the Hon'ble Supreme Court in Harish Verma & Ors. Vs. Ajay Srivastava & Anr. reported in 2003 (8) SCC page 69 and argued that the Hon'ble Supreme Court in that case has authoritatively held that the State Government or the University have no competence to alter or modify the minimum qualifying marks prescribed by Medical Council of India in clause (9) of the Regulations of 2000. It was argued that the females of general category cannot be treated at par with S.C., S.T. and O.B.C. for whom special provisions exists in the Constitution as well as in the Regulations of 2000. It was therefore prayed that the writ petition be dismissed.

I have heard the learned counsel for the parties and perused the material on record.

Question whether any lesser qualifying marks other than those prescribed in clause (9) of the Regulations, 2000 was indeed debated before and decided by the division bench of this Court which by its judgment dated 28.8.02 referred the same for decision to a Full Bench. The Full Bench by its judgment dated 5.2.03 while allowing the appeal held that Regulation framed by Medical Council of India had only a persuasive value and were not binding on the State Government. It was further held that the State has the power to prescribe a lower percentage of marks for in-service candidates. Regulation 9 does not apply to in-service candidates, therefore, it was held that minimum qualifying marks for in-service candidates could not have wide

disparity with the marks prescribed for general candidates. The Full Bench therefore held that it would be open to the State Government to go ahead with the admission of in-service candidates to the post-graduate courses on the basis of such percentage of qualifying marks which may be lower than 50% but not below 40%, which is the minimum eligible percentage prescribed for the reserved category candidates. The aforesaid judgment of Full Bench was challenged before the Hon'ble Supreme Court in Harish Verma & Ors., supra and their Lordships while referring the Constitutional Bench judgment of Hon'ble Supreme Court in Preeti Srivastava (Dr.) Vs. State of M.P., (1999) 7 SCC 120 held that the Full Bench judgment was rendered in ignorance of the binding law laid down by majority opinion of Preeti Srivastava and was also inconsistent with

the later decision of the Supreme Court in Gopal D. Tirthani, (2003) 7 SCC 83. The judgment of the Full Bench was therefore reversed and resultantly admission of number of candidates made pursuant to judgment of the Full Bench was also ordered to be cancelled. Although the aforesaid judgment was rendered in the context of in-service candidates but the substance of the matter being the same that in-service candidates wanted similar treatment as was being extended to members of S.C., S.T. & O.B.C. and the same was denied because in Preeti Srivastava, supra, the Hon'ble Supreme Court held that the Medical Council Regulations have statutory force and are mandatory and whether any lower minimum qualifying marks than the one prescribed by the first proviso to Regulation 9 can be prescribed as the eligibility at the post graduate level of

medical education is the question which must be decided by Medical Council of India alone since it affects the standards of post graduate medical education. In my considered view, that decision would cover the controversy raised in this case also on all its four corners.

Besides, the relaxation in the minimum qualifying marks extended to the students of S.C. S.T. and O.B.C. being in the nature of protective discrimination stands entirely on different footings. Such reservation has rightly been referred to as vertical reservation as held by Constitutional Bench in Indra Sawhney & Ors. Vs. Union of India & Ors., 1992 Supp (3) SCC 217 that reservation in favour of S.C., S.T. & O.B.C. are in the nature of vertical reservation and such reservations are provided on communal lines whereas the reservation provided to females,

disabled, dependents of ex-army man etc. is referred to as horizontal reservation, which cut across the vertical reservation and that is why it is referred to as interlocking reservation. In other words, the horizontal reservation has to be provided within the vertical reservation, so to say, females of the S.C., S.T. & O.B.C. would be entitled to reservation to the extent provided within the reservation provided to each of those categories. Argument in the present case that the petitioner should be equated with the S.C., S.T. & O.B.C. is wholly misconceived and is liable to be rejected. It is for the Medical Council of India to decide whether or not any different criteria should be applied to females of the general category just like S.C., S.T. & O.B.C and for that matter, females of each of these categories. While therefore dismissing the

writ petition, I set the petitioners at liberty to make an appropriate representation to the Medical Council of India, which, it is expected, would consider and decide the same keeping in view the policy of the State for providing reservation to females consistent with the standards of education for admission to Medical Institutions.

The writ petition is accordingly dismissed though with the aforesaid observations.

(Mohammad Rafiq),J.

Rs/-